

Proposed Text of Regulations

Title 2, California Code of Regulations, Division 3, Chapter 1

Article 14: Administrative Hearings

§3000. Authority and Purpose

These regulations are promulgated pursuant to Section 6224.5(d) of the Public Resources Code to provide the Commission with procedures for orderly hearings and just administration of penalties under Sections 6224.3 and following for unauthorized Structures on State Lands. The procedures established by these regulations shall not apply to the Commission's Abandoned Vessels program authorized by Public Resources Code Sections 6302.1 and following.

NOTE: Authority Cited: Section 6224.5, Public Resources Code. Reference: Sections 6108, 6224.3, 6302.1 et seq., Public Resources Code.

§ 3001. Definitions

(a) As used in these regulations, words in the singular shall include the plural and words in the plural shall include the singular, unless the context otherwise requires. The following words, terms and phrases, when used in this Article, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) "Commission" means the California State Lands Commission.
- (2) "Commissioner" means a California State Lands Commissioner specified in Section 6101 of the Public Resources Code, or a designated alternate under Section 7.6 of the Government Code.
- (3) "Commission Authorization" means a current, written and executed lease, permit, right of way, easement, or other valid permission to occupy State Lands issued by the Commission, or otherwise provided by law.
- (4) "Commission Meeting" means a regularly-noticed public meeting of the Commission.
- (5) "Notice of Violation" means the Notice of Violation substantially complying with the content set out in Appendix A.
- (6) "Presiding Officer" means the Commissioner designated to conduct the hearings under this Article.
- (7) "Respondent" shall mean a person or entity that is suspected of violating Section 6224.3 of the Public Resources Code.

- (8) “State Lands” means land under Commission jurisdiction, held in fee by the state of California. “State Lands” excludes those lands legislatively granted in trust to local jurisdictions, and lands where the underlying fee is not held by the state, but a public trust easement exists.
- (9) “Structure” means any human construction, including but not limited to: buildings, boat houses, docks, piers, buoys, revetments, fill, pilings, pipelines, groins, jetties, seawalls, breakwaters, bulkheads; along with all similar constructions.

NOTE: Authority Cited: Section 7.6, Government Code; Sections 6101, 6224.5, 6301, Public Resources Code. Reference: Sections 6102, 6216, 6301, 8705, Public Resources Code.

§ 3002. Prohibited Conduct

- (a) Unless otherwise exempted, all Structures on State Lands require Commission Authorization. The person or entity seeking to maintain Structures on State Lands must be named in the Commission Authorization.
- (b) Structures constructed, placed, maintained, owned, used, or possessed without Commission Authorization; Structures for which Commission Authorization has expired or been terminated; or Structures which vary from or exceed Commission Authorization are prohibited and shall constitute grounds for imposition of penalties and/or an injunction by the Commission.
- (c) The Commission retains discretion to approve or deny applications submitted for the use of State Lands.

NOTE: Authority Cited: Sections, 6216.1, 6224.3, 6301, Public Resources Code. Reference: 6303.1 Public Resources Code.

§ 3003. Investigation and Discovery

- (a) Commission staff may investigate a suspected violation of Section 6224.3 of the Public Resources Code.
- (b) Commission staff may inspect and survey the land and/or Structures in question. The Respondent shall not deny reasonable access for Commission staff to conduct an inspection and/or survey.
- (c) The Executive Officer or Assistant Executive Officer may issue a Notice of Violation if the facts so warrant in their judgment.

NOTE: Authority Cited: Section 6224.5, Public Resources Code; Section 11180 Government Code; Section 8774 Business and Professions Code.

§ 3004. Notice of Violation Procedure

- (a) The Notice of Violation shall describe the alleged violation, shall reference the documents on which Commission staff relies to provide a prima facie case, and shall give notice that the documents may be inspected at the Commission's Sacramento office. The Respondent may submit a written request for copies of any or all documents relied on by staff, which shall be provided within five (5) business days of the request and upon payment of the copying costs.
- (b) The Notice of Violation shall include notice of the date, time, and location of the enforcement hearing.
- (c) The Notice of Violation shall be accompanied by a Statement of Defense form that substantially conforms to content set out in Appendix B.
- (d) The Notice of Violation may be served by personal service or, in lieu of personal service, by registered mail and by posting the Notice of Violation on the Structure in question.
 - (1) Personal service may be performed by hand delivery; or by leaving and mailing a copy as provided in section 415.20, Code of Civil Procedure; or by service on an authorized agent as provided in section 416.90, Code of Civil Procedure. If an employee or agent of the Commission attempts personal service on a Respondent and is prevented from doing so by a guard or other security personnel, personal service may be completed by leaving a copy of the Notice of Violation with the person denying access and thereafter mailing a copy to the Respondent's usual mailing address. Personal service on a business entity may be completed in any manner that would satisfy the requirements of sections 416.10 or 416.20 of the Code of Civil Procedure.
 - (2) The Notice of Violation may be served by United States Postal Service registered mail, or any equivalent service that includes verification of delivery at the intended address. The usual mailing address, normal place of business, or the address on record where the Respondent's property tax bill is sent shall be presumed to be the correct address, unless facts known to Commission staff make such a presumption unreasonable. Any competent member of the household may sign the delivery verification.

- (e) If the suspected violation involves multiple Structures in the same area believed to be maintained by a common Respondent or Respondents, then the Notice of Violation may be posted on a single Structure.
- (f) If an employee or agent of the Commission attempts to post a Notice of Violation on a Structure and is prevented from doing so, or if posting the Notice of Violation on the Structure would place the employee or agent in danger, the employee or agent shall post the Notice of Violation in a visible location as close to the Structure as reasonably possible.

NOTE: Authority Cited: Sections 6224.4(a)(4), 6224.5, Public Resources Code.
Reference: Sections 415.20, 416.10, 416.20, and 416.90, Code of Civil Procedure;
Sections 11415.40 and 11440.20, Government Code.

§ 3005. Stipulation of Fact; Resolution of Matter Without Hearing

- (a) A Respondent may stipulate to any fact in issue. The stipulation must be in writing or made by oral statement on the record.
- (b) The Commission may resolve a matter with a stipulation, agreed settlement, or consent order, with the agreement of the Respondent, in lieu of holding a hearing. Such a resolution must be in writing or made by oral statement on the record.
- (c) The Executive Officer or Assistant Executive Officer may dismiss an individual Respondent or terminate an entire pending enforcement matter prior to the enforcement hearing if clear evidence that the Respondent is not liable for a violation of Public Resources Code section 6224.3 is discovered.

NOTE: Authority Cited: Section 6224.5, Public Resources Code; Section 11415.60, Government Code.

§ 3006. Distribution of Notice of Enforcement Hearings

- (a) The Commission Meeting agenda shall include notice of the enforcement hearing. A copy of the Commission Meeting agenda shall be provided to any member of the public who has requested in writing that they receive such notices. Copies of the agenda may be provided by regular United States mail or by electronic mail. Copies of the agenda may also be requested in person at the Commission's offices.
- (b) If the date, time, or location of the Commission Meeting during which the enforcement matter will be heard changes, Commission staff shall mail by regular United States mail a written notice of the new date, time, and place of the enforcement hearing to all Respondents at their last known address at least ten (10) days prior to the new meeting date.
- (c) If the Presiding Officer determines that a subsequent enforcement hearing is necessary, notice of the subsequent hearing may be given by either announcing the

date, time, and place of the subsequent hearing on the record at the close of the enforcement hearing, or by mailing written notice of the date, time, and place of the further meeting by regular United States Mail to all Respondents at least ten (10) days prior to the further enforcement hearing. Notice of a subsequent hearing will also be provided in the Commission Meeting agenda.

- (d) The Executive Officer or Assistant Executive Officer may postpone the enforcement hearing date for good cause provided the Respondent is notified at least forty-eight (48) hours prior to the original enforcement hearing date.

NOTE: Authority Cited: Section 6224.5, Public Resources Code. Reference: Section 11125, Government Code.

§ 3007. Ex Parte Communication

- (a) There shall be no communication, direct or indirect, regarding any issue in the proceeding, with the Commissioners, their alternates, or the Commissioners' personal staff from a party or an interested person, without notice and opportunity for all parties to participate in the communication. For the purposes of this section:
- (1) The Commissioners' personal staff includes staff of: the Office of the Lieutenant Governor, the California State Controller's Office, and the Department of Finance.
- (2) A party includes the Respondent, their agents or representatives, and the Commission staff involved in the investigation.
- (b) Communication between Commission staff and the Commissioners or their alternates shall comply with Government Code sections 11430.10 et seq.
- (c) Communications in violation of this section shall be remedied according to Government Code Section 11430.50.
- (d) Communications between the Respondent and Commission enforcement staff concerning the pending enforcement matter are not prohibited. Swift resolution of the pending matter is encouraged.

NOTE: Authority Cited: Section 6224.5, Public Resources Code, Sections 11430.10 et seq. Government Code.

§ 3008. Conduct of Persons at Hearings

- (a) The following conduct is prohibited during or near the place of an enforcement hearing:
- (1) Refusing to take an oath or affirmation as a witness or thereafter refusing to be examined; or
- (2) disorderly or boisterous conduct; or
- (3) obstructing or interrupting the proceeding or interfering with the participants.
- (b) The Presiding Officer may exclude any persons from the hearing or premises for a violation of this section. If the person violating this section is a witness, the Presiding Officer may exclude further testimony by such person. If the person

violating this section is the Respondent, the Respondent may be excluded and denied any further opportunity to present evidence.

NOTE: Authority Cited: Section 6224.5 Public Resources Code.

§ 3009. Contents of the Recommended Decision and Order

- (a) The Executive Officer or Assistant Executive Officer shall prepare a recommended decision and order.
- (b) The recommended decision and order shall be in writing and shall include:
 - (1) a copy of any Statement of Defense form if such form was completed and returned to the Commission by the Respondent at least twenty (20) days prior to the hearing;
 - (2) a brief summary of (A) any background to the alleged violation, (B) the allegations made by staff in Notice of Violation, (C) a list of all allegations either admitted or not contested by the Respondent, (D) any timely submitted defenses and mitigating factors asserted by Respondent, and (E) any argument or evidence in rebuttal to matters raised by the Respondent;
 - (3) a summary and analysis of all unresolved issues;
 - (4) a recommended finding of fact;
 - (5) the amount of any recommended civil penalty, along with any subsequent increase in the amount;
 - (6) the name of the Respondent required to pay the civil penalty;
 - (7) the date on which the civil penalty begins;
 - (8) the recommended text of any Commission orders appropriate under the circumstances, including an injunction to cease and desist conduct, an order to surrender possession of State Land, an order to remove Structures, or an order to restore State Lands.
- (c) At least ten (10) days prior to the enforcement hearing, the Executive Officer or Assistant Executive Officer shall mail by regular United States mail the recommended enforcement order to the Respondent, the Presiding Officer, and other members of the Commission.

NOTE: Authority Cited: Sections 6224.5 Public Resources Code.

§ 3010. Admissibility of Evidence

- (a) Relevant evidence shall be admitted if it is the sort of evidence responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of any common law or statutory rule prohibiting such evidence in civil actions.
- (b) The Presiding Officer may exclude unduly repetitious or irrelevant evidence.

NOTE: Authority Cited: Section 6224.5, Public Resources Code.

§ 3011. Failure of Respondent or Witness to Appear at Enforcement Hearing

- (a) Failure of a Respondent or witness to attend the properly noticed enforcement hearing constitutes a waiver of the opportunity to be heard at such hearing.
- (b) If the Respondent fails to appear after being served, the Presiding Officer may issue a decision and order, and the Commission may vote to accept and finalize the decision and order.

NOTE: Authority Cited: Sections 6224.4(c), 6224.5 Public Resources Code; Section 11415.40 Government Code. Reference: Section 11506, Government Code.

§ 3012. Enforcement Hearing Procedure

Enforcement hearings shall proceed in the following manner:

- (a) The Commission Chairperson or his or her designated alternate shall serve as the Presiding Officer. The Presiding Officer shall announce the matter and ask all Respondents and/or their authorized agents present to identify themselves for the record.
- (b) The Presiding Officer may impose time limits for presentations by Commission staff, the Respondent, and the public at the hearing.
- (c) Commission staff shall summarize the law, facts, and evidence supporting staff's position. Commission staff may present staff's position on the recommended enforcement order.
- (d) Each Respondent shall summarize its positions on the matters relevant to the alleged violation or recommended decision and order with particular attention to those issues where an actual controversy exists between the staff and the Respondents.
- (e) Other speakers may speak concerning the matter.
- (f) The Presiding Officer and Commissioners may ask questions at any time during the hearing or deliberations.
- (g) The Commission may postpone or continue an enforcement hearing if, in the Commission's sole and absolute discretion, circumstances or fairness so dictate.
- (h) The Presiding Officer shall close the public hearing after Commission staff, the Respondent, and any additional speakers have completed their presentations.

NOTE: Authority Cited: Section 6224.5, Public Resources Code.

§ 3013. Written Decision and Order

- (a) After the enforcement hearing has concluded, the Presiding Officer shall render a decision as to whether or not the Respondent is liable for a violation of Section

6224.3 of the Public Resources Code, the appropriate penalty, and any further orders appropriate under the circumstances.

- (b) The Presiding Officer may:
 - (1) Adopt the recommended decision and order;
 - (2) Modify the recommended decision and order; or
 - (3) Direct staff to draft a decision and order on terms dictated by the Presiding Officer.
- (c) The Commission shall vote to approve the decision and order. If the Commission elects to modify the Presiding Officer's decision and order, the reasons for the modification shall be stated on the record.
- (d) Once adopted by vote, the Commission's decision is final. The Commission may adopt a decision by majority vote, pursuant to the Commission's usual voting procedures. The decision and final order shall include notice that the Respondent may file a petition for writ of mandate with the superior court for review of the order pursuant to section 1094.5 of the Code of Civil Procedure within sixty (60) days after the decision has become final.
- (e) The Respondent shall be provided a copy of the decision and order. The decision and order may be provided to the Respondent in person at the conclusion of the hearing, by U.S. mail, or commercial carrier.

NOTE: Authority Cited: Sections 6224.3, 6224.4, and 6224.5, Public Resources Code; Section 11425.50, Government Code.

§ 3014. Penalty

- (a) The civil penalty imposed will be based on the per diem method of 6224.3(b) rather than the formula based on the market rate rental of the property unless the maximum penalty of \$1,000 a day would represent a discount in rent. If the market rate rental of the property exceeds \$365,000 annually, the Commission may impose a monthly penalty of up to 10.83% of the annual rent, which represents one twelfth (1/12) of one hundred thirty percent (130%) of the normal rent, rounded down.
- (b) For properties where the market rental rate is below \$365,000 annually, the fine imposed shall be:
 - (1) Five hundred dollars (\$500) per day for the first one hundred twenty (120) days.
 - (2) One thousand dollars (\$1,000) per day starting on the one hundred twenty-first (121st) day.
- (c) The Presiding Officer shall consider the factors specified in Section 6224.3(c) of the Public Resources Code before imposing the penalties specified above, and may modify the penalties based on such factors. Where the Presiding Officer finds that one or more of the factors from Section 6224.3(c) dictate an adjustment to the penalty, the Presiding Officer shall specify the factor relied on for the modification and a brief statement of the facts influencing such factor in the final order.

- (d) A penalty under this Article shall be imposed from the first day after the decision becomes final as defined in regulation 3013, subdivision (d) and shall continue until the violation is remedied. The Presiding Officer may modify the penalty to a reduced amount for a set period of time. The Presiding Officer shall state the reason or reasons in the civil penalty order for any mitigation to the penalty.
- (e) A penalty under this Article may be tolled for a reasonable time while Commission staff process an application for Commission Authorization. The penalty may be tolled from the date Commission staff receives a completed application and all processing fees until a valid Commission Authorization exists, or as otherwise provided in the decision and order. If a civil penalty is tolled under this subparagraph, then the following conditions will apply:
- (1) The Respondent must diligently work toward completion of the application process and execute a Commission Authorization.
 - (2) The penalty may not be tolled more than four (4) months unless the Executive Officer or Assistant Executive Officer find circumstances dictating that a longer period is appropriate. Such circumstances include unforeseen complexities in the lease, environmental review, significant delays caused by Commission staff, or unavoidable circumstances. A penalty authorized by this Article will authorize the Executive Officer or Assistant Executive Officer to make such findings, provided the Commission subsequently ratifies these findings.
 - (3) If a penalty has been tolled, and the Respondent fails to diligently complete the application process, or does not execute a valid Commission Authorization for the Structures specified in the decision and order within the four (4) month period, or any extensions thereto, the penalty will resume as if it had not been tolled, including any penalties that would have accrued during the tolling period.
- (f) A penalty under this Article may be tolled for a reasonable time for the Respondent to remove all Structures from State Land. The maximum duration the penalty may be tolled shall be determined by the Presiding Officer based on the circumstances of the case. If the Respondent fails to diligently pursue removal, or fails to remove the Structures in the allotted period, the penalty will resume as if it had not been tolled, including any penalties that would have accrued during the tolling period.
- (g) A penalty under this Article shall terminate when:
- (1) the Structure(s) specified in the decision and order are removed from State Lands, and Commission staff have verified the Structure(s) and all remnants or debris therefrom have been removed in a satisfactory manner; or
 - (2) the Respondent obtains Commission Authorization for all Structures specified in the decision and order.
- (h) The Commission may, in its sole and absolute discretion, waive some or all of the penalties imposed under this Article on the Respondent's remedy of the violation.

NOTE: Authority Cited: Sections 6224.3, 6224.4, and 6224.5, Public Resources Code.

§ 3015. Enforcement Record

The record of an enforcement hearing shall consist of:

- (a) the Notice of Violation, including all documents referred to in the notice;
- (b) the Executive Officer or Assistant Executive Officer's recommended decision and order, including all documents referred to therein;
- (c) the Respondent's Statement of Defense form, if timely submitted;
- (d) minutes of all Commission enforcement hearings on the matter or a transcript of the proceedings;
- (e) evidence submitted by the Respondent, or presented by Commission staff at the enforcement hearing if not already included above;
- (f) the Presiding Officer's written decision and order;
- (g) the final decision and order approved by the Commission if this differs from the Presiding Officer's decision and order;
- (h) any statutes, regulations, or other legal authorities or precedents relied on by the Commission or the Respondent; and
- (i) any other information or documents considered or relied on by the Commission in the matter.

NOTE: Authority Cited: Section 6224.5 Public Resources Code.

§ 3016. Precedent Decisions.

The Commission may designate a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur as a precedent decision.

NOTE: Authority Cited: Sections 6108 and 6224.5 Public Resources Code, Section 11425.60, Government Code.